

the entire mineral enterprise. For special rules with respect to certain corporate acquisitions referred to in section 381(a), see section 381(c)(18) and the regulations thereunder.

(j) *Definition of controlled group.* When used in this section:

(1) The term *controlled* includes any kind of control, direct or indirect, whether or not legally enforceable, and however exercisable or exercised. It is the reality of the control which is decisive, not its form or the mode of its exercise. A presumption of control arises if income or deductions have been arbitrarily shifted.

(2) The term *group* means the organizations, trades, or businesses owned or controlled by the same interests.

[T.D. 7170, 37 FR 5374, Mar. 15, 1972]

§ 1.613-5 Taxable income from the property.

(a) *General rule.* The term *taxable income from the property* (computed without allowance for depletion), as used in section 613 and this part, means *gross income from the property* as defined in section 613(c) and §§ 1.613-3 and 1.613-4, less all allowable deductions (excluding any deduction for depletion) which are attributable to mining processes, including mining transportation, with respect to which depletion is claimed. These deductible items include operating expenses, certain selling expenses, administrative and financial overhead, depreciation, taxes deductible under section 162 or 164, losses sustained, intangible drilling and development costs, exploration and development expenditures, etc. See paragraph (c) of this section for special rules relating to discounts and to certain of these deductible items. Expenditures which may be attributable both to the mineral property upon which depletion is claimed and to other activities shall be properly apportioned to the mineral property and to such other activities. Furthermore, where a taxpayer has more than one mineral property, deductions which are not directly attributable to a specific mineral property shall be properly apportioned among the several properties. In determining the taxpayer's taxable income from the property, the amount of any particular item to be taken into account shall be

determined in accordance with the principles set forth in paragraph (d)(2) and (3) of § 1.613-4.

(b) *Special rule; decrease in mining expenses resulting from gain recognized under section 1245(a)(1).* (1) If during any taxable year beginning after December 31, 1962, the taxpayer disposes of an item of section 1245 property (as defined in section 1245(a)(3)) which has been used in connection with a mineral property, then for the purpose of computing the taxable income from such mineral property for such taxable year, the allowable deductions taken into account with respect to expenses of mining (that is, expenses attributable to a mineral property other than an oil and gas property) shall be decreased by an amount equal to the portion of any gain recognized under section 1245(a)(1) (relating to treatment of gain from dispositions of certain depreciable property as ordinary income) which is properly allocable to such mineral property in respect of which the taxable income is being computed. The portion of such gain which is properly allocable to such mineral property shall bear the same ratio to the total of such gain as:

(i) The portion of the *adjustments reflected in the adjusted basis* (as such term is defined in paragraph (a)(2) of § 1.1245-2, relating to definition of recomputed basis) of such section 1245 property, which were allowable as deductions from the *gross income from the property* (as defined in section 613 (c) and § 1.613-3) in computing the taxable income from such mineral property, bears to

(ii) The total of the *adjustments reflected in the adjusted basis* of such section 1245 property.

(2) For the purposes of this paragraph, the adjustments reflected in the adjusted basis of the section 1245 property disposed of shall be deemed to have been taken into account in computing the taxable income from the mineral property for any taxable year notwithstanding that for the taxable year the allowance for depletion was determined without reference to percentage depletion under section 613.